THE CALVERT SERIES
HILAIRE BELLOC, *General Editor*

THE CATHOLIC CHURCH AND THE CITIZEN

THE CALVERT SERIES

HILAIRE BELLOC, *General Editor*

Belloc: THE CATHOLIC CHURCH AND HISTORY

Chesterton: THE CATHOLIC CHURCH AND CONVERSION

McNabb: THE CATHOLIC CHURCH AND PHILOSOPHY

Ward: THE CATHOLIC CHURCH AND THE APPEAL TO REASON

Windle: THE CATHOLIC CHURCH AND ITS REACTIONS TO SCIENCE

IN PREPARATION

Ryan: THE CATHOLIC CHURCH AND THE CITIZEN

Walsh: THE CATHOLIC CHURCH AND HEALING

Thurston and Geddes: THE CATHOLIC CHURCH AND CONFESSION

Pope: THE CATHOLIC CHURCH AND THE BIBLE

Gillis: THE CATHOLIC CHURCH AND THE HOME

THE CATHOLIC CHURCH AND THE CITIZEN

BY
JOHN A. RYAN

New York
THE MACMILLAN COMPANY
1928

Nihil Obstat
ARTHUR J. SCANLAN, S.T.D.
Censor Librorum.

Imprimatur
✠ PATRICK CARDINAL HAYES
Archbishop, New York.

New York, February 10, 1928.

Set up and electrotyped.
Published April, 1928.

SET UP BY BROWN BROTHERS LINOTYPERS
Printed in the United States of America by
THE FERRIS PRINTING COMPANY, NEW YORK

CONTENTS

THE CATHOLIC CHURCH AND THE CITIZEN

THE CATHOLIC CHURCH AND THE CITIZEN

CHAPTER I

THE CITIZEN AND THE STATE

CITIZENSHIP is the condition of being a citizen. The usual definition of citizen is: A member of the state. The following are two definitions of the state: A perfect and self-sufficing society consisting of many families united under a common ruler for the attainment of the complete welfare and life of the community. The second definition differs from the first only in the matter of emphasis: The state is a community of persons occupying a definite territory and possessing an organized and sovereign government for promoting the common good. The words "perfect and self-sufficing" in the first definition express about the same meaning as that which the second denotes by the words "definite territory" and "sovereign government."

To the definition of the citizen as a member of the state, it might be objected that an alien resident in a political community is in some sense a member of that community. The alien is subject to most of the laws of the state in which he lives and enjoys a large measure of its protection. Therefore, it is better to define the citizen as that member of a state who has a claim to its

full protection, has rights of a political character and owes to the state formal allegiance. On the other hand, the alien has no right to the protection of his present government when he returns to his own country or sojourns in other countries; neither has he the right to vote or to hold office in the country in which he now lives, nor does he owe the government of this country military service, nor would his act of taking up arms against it be construed as treason. As compared with the citizen, the alien's membership in the state is considerably limited.

The chief elements of citizenship are rights and duties. These are moral entities or categories. The relation of the citizen to the state is ethical as well as political. His rights are not all conferred by the state; some of them are natural, existing independently of the state because they are necessary for individual welfare. His duties to the state are not merely civil and political; in the main they are likewise moral, creating a binding force in conscience.

The duties of the citizen are truly ethical, because the state is not a voluntary social institution. It is not like a fraternal society or a professional association. A member of these and like organizations has no moral obligations toward the society beyond those which he assumed as a matter of explicit or implicit contract when he became affiliated. Moreover, he is free to remain outside such organizations or to leave them after he has entered. On the other hand, the citizen does not enjoy the moral liberty of remaining out of or going out of the state, nor may he decline to accept the regulations and duties which membership in the

state entails. All this follows logically from the fact that the state is necessary for human welfare. Said Pope Leo XIII in his Encyclical, *On the Christian Constitution of States:*

> Man's natural instinct moves him to live in civil society, for he can not, if dwelling apart, provide himself with the necessary requirements of life, nor procure the means of developing his mental and moral faculties. Hence it is divinely ordained that he should lead his life—be it family, social, or civil—with his fellow-men, amongst whom alone his several wants can be adequately supplied. But as no society can hold together unless some one be over all, directing all to strive earnestly for the common good, every civilized community must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its author. Hence it follows that all public power must proceed from God. For God alone is the true and supreme Lord of the world. Everything, without exception, must be subject to Him, and must serve Him, so that whosoever holds the right to govern, holds it from one sole and single source, namely, God, the Sovereign Ruler of all.

It should be kept in mind that the principle expressed in the foregoing quotation, namely, that the political ruler gets his right to govern from God, is not the same as the doctrine which has received the appellation, "The Divine Right of Kings." The latter derives mainly from the claim made by King James I of Eng-

land, although it was cherished by other monarchs. According to King James, his governing authority was conferred upon him directly by Almighty God. It did not come to him through the people, nor from the fact that he was the constitutional heir to the English throne, nor on account of any other earthly fact or event. "The Divine Right of Kings" means a right conferred immediately upon the ruler by a special act of divine intervention, just as Saul was empowered to rule over Israel. On the other hand, the authoritative Catholic teaching, as described above by Pope Leo, declares that political authority comes from God indeed, but in the course of nature. It is not conferred by a divine act of supernatural intervention. It comes into existence as a necessary consequence of the needs and destiny of human beings. They cannot live right and reasonable lives without civil society; civil society cannot function effectively without a governing authority; this authority must have moral as well as physical power; therefore, moral authority in the ruler, like political society itself, is necessary for human welfare. Consequently, it is sanctioned and ratified by the Creator and Governor of the human race. Hence the political ruler has true authority to govern and the citizens have a moral obligation to obey.

CHAPTER II

THE BASIS OF AUTHORITY IN PARTICULAR GOVERNMENTS

In the paragraphs immediately preceding, the moral authority of the state has been described in general and in the abstract. Such authority must lie somewhere in the state. How is it determined or located in the concrete? What person or persons in any given state are authorized to possess and exercise political authority? Historically, the governing power has been exercised by emperors, kings, presidents, dictators, legislators, congresses, parliaments and aristocracies. These have been merely human individuals or groups of individuals. Where did they get the right to govern the other members of their respective states? Whence do the political rulers of to-day derive their right to govern? The source cannot be mere physical power, for the end of states and governments is the common good, and we know that many rulers possessing an abundance of physical power have so governed as to thwart rather than to attain that end. If the government of the United States were usurped by a sufficiently powerful combination of foreign governments, we should not acknowledge their rule as morally legitimate, or as having a just claim upon our obedience. Yet St. Paul declares: "The powers that are,

are ordained of God." When and how did that ordination take place?

The Church has no official teaching on this question. But her competent private teachers, the moral theologians and the canonists, have discussed it at considerable length over a period of several centuries. Two principal theories are represented in their teaching, but that which is usually associated with the names of Cardinal Bellarmine and Francisco Suarez, S.J., has been accepted and defended by the great majority. Bellarmine's work was written in the last quarter of the sixteenth century; that of Suarez in the first quarter of the seventeenth. The former's doctrine may be summarized as follows: Political authority in general comes directly from God to the whole community. Since God has not given it to any one in particular, there is no natural reason why it should reside in one rather than another of many equal individuals. Inasmuch as the community is unable to exercise this authority directly, it must transfer the function to one or to a few persons. The community, the "multitude," also has the right to determine the form of government, whether it is to be a monarchy, an aristocracy, or a democracy, and, for a legitimate reason, to change any one of these forms into another. While the authority is, indeed, from God, it becomes particularized in one or more individuals through human counsel and choice.[1]

It was in reply to this statement that King James I formulated his defense of the divine right of kings. Suarez replied to James, declaring that Cardinal Bellarmine's statement represented the "ancient, commonly

[1] *De Laicis*, ch. vi.

accepted and true teaching," and submitting a long list of theological and canonical writers in proof of its universality and antiquity. Otto Gierke, a distinguished non-Catholic authority, tells us that "an ancient and generally entertained opinion regarded the will of the people the source of temporal power. . . . Indeed, that the legal title of all rulership lies in the voluntary and contracted submission of the ruled, could therefore be propounded as a philosophic axiom."[2] According to Dr. A. J. Carlyle, "the fact that in mediaeval theory the authority of the king is founded upon the election or at least the recognition of the community, does not in truth require any serious demonstration."[3]

The other theory has been explicitly taught by a rather small number of authoritative writers. It varies from the first theory only to the extent of declaring that the people have the right to determine the form of government and designate the ruler, but not to act as depository of governing authority. According to this view, the moral authority to rule descends directly through God to the person or persons designated by the people. According to the majority opinion, it comes from God directly to the people, who then transfer it to the person or persons whom they have chosen. As Cardinal Billot declares, there is little or no practical difference between the two theories.[4] Both assume that the consent of the people is always a necessary prerequisite to the formation of a political constitution and the assumption by any person of political power.

[2] *Political Theories of the Middle Age*, pp. 38, 40.
[3] *History of Mediaeval Political Theory in the West*, vol. iii, p. 153.
[4] *De Ecclesia Christi*, sec. 1, ch. iii.

Both teach that the ruler does not receive governing authority until the people have somehow given their consent.

Since the beginning of the nineteenth century, several Catholic writers have departed from both forms of the traditional doctrine, and asserted that neither kind of popular consent is necessary. They point out that, as a matter of historical fact, the first governor of a community was in many cases the patriarch; that this personage did not owe his political position to any sort of pact between himself and the community; that the people neither chose him as their ruler nor conferred upon him political authority. In many such cases, nevertheless, the patriarch undoubtedly assumed and carried on his political functions with at least the tacit consent of the community. This fact is consistent with either of the traditional views; that is, that the people transfer authority or that they merely designate the person who is to exercise authority. However, the writers whom we are discussing go a step further and declare that in many primitive societies the patriarch had the right to rule even *against the wishes* of his people because he was the only one among them capable of governing in such a way as to promote the public welfare. Whenever this situation existed, the ruler undoubtedly had a right to govern, regardless of the attitude of the community. Neither an individual nor a social group possesses rights which serve no useful purpose. In the situation that we are considering, the right of the people to withhold authority from the only person who was capable of rightfully administering it would have been an irrational prerogative. The end

of all government is the common good. If the patriarch or any other person was the only one capable of attaining this end in a given community, he had an exclusive right to govern.

On the other hand, if there was more than one person capable of giving an adequate government, and if the people refused their consent to the one who actually assumed the reins of government, he was in the position of a usurper. He had no right to govern, for the simple reason that in the circumstances he was not the only capable ruler, and, therefore, had no adequate ground or title to support his pretensions. Upon what moral ground could he have claimed the right to govern as against any one of half a dozen others who were equally capable? In this situation, the consent of the people would have been the only rational method of making the choice and designation. It would have constituted a valid title, for the simple reason that popular opposition is always a very considerable obstacle to the ability of the ruler to give an adequate government. Whether the refusal of their consent would justify the people in overthrowing the usurping ruler by force is an entirely different question, and will be noticed a little later. All that we are concerned with here is to point out that the first ruler of a community has no right to rule against the wishes of the people if there are other persons equally capable of providing an adequate government with the consent of the people. Hence it is only in very exceptional cases that the traditional Catholic theory about the way in which the first ruler of a community got his rightful authority can be refuted or shown to be unreasonable.

So much for the original ruler of a community. Whence do modern governments derive their rights to rule and to command the obedience of their subjects and citizens? Not primarily through the consent of the present generation. To hold that the moral authority of existing governments depends primarily or entirely on the attitude of existing peoples would be to sanction a degree of political instability which would be subversive of the end of all government, namely, popular welfare. Accomplished facts and the introduction of political constitutions render the question of legitimate authority different and more complex in long-established political societies than in those which are just coming into existence. The reason for the difference is to be found in the requirements of the common good.

The primary source of political authority in any community at any time subsequent to the disappearance of the first ruler is the existing political constitution. At least this is the case wherever a constitution is in force and the country is not in a condition of revolution or anarchy or violent transition from one ruler to another. This general proposition is true whether the constitution be that of a monarchy, an aristocracy, a republic, or any modification of these forms. The king, the aristocracy and the elected representatives all derive their rightful authority primarily from the fact that it is provided for in the existing constitution. In each of these three situations the government may possess or may lack the consent of the people. In a monarchy or an aristocracy the popular consent may

be tacit. Under a republican form of government the consent is necessarily explicit at periodical intervals, that is, at elections. Have the rulers the right to continue governing if popular consent is wanting? If they are the only persons capable of providing an adequate government, undoubtedly they have such a right. If they are not, they still have a right to govern for such time as is necessary in order that a substitute government may be provided by methods which are in harmony with the common good. What this means can be better perceived if we consider the situation from the side of the subjects and citizens.

We ask, then, whether the people are obliged to maintain and obey a government which they would like to overthrow. The American Declaration of Independence proclaims that governments "derive their just powers from the consent of the governed." Does this mean that a people may licitly change their government for any reason or for no reason? Evidently not, for the Declaration asserts the right of the people to alter or abolish a government only when it "has become destructive of these ends," that is, life, liberty and the pursuit of happiness. A dissatisfied people is obliged to observe all those laws which are necessary for elementary public order, as in the matters of safety for life and property. This statement would be true to some extent under any government, no matter how tyrannical. To those laws which are not necessary for elementary public order, the citizens are justified in offering passive resistance whenever a change in the form of government is conducive to the common

good and when the constitution makes no provision for change by such methods as an election or a plebiscite. Obviously, this statement does not apply to a people that enjoys a normally functioning republican form of government. In all cases it is assumed that the people have some serious grievances and that their dissatisfaction is not a temporary and passing condition. Whether the desire to participate in the business of the government through representative institutions would be a sufficient grievance to justify the people in abolishing through passive resistance a monarchial government which was performing its functions with average efficiency, is a question that need not be solved here. However, I am inclined to give an affirmative answer.

Has an aggrieved people a right to go beyond passive resistance? Have the people a right to seek the overthrow of their government by violent revolution? Generally speaking no such right exists in a republic which provides free and fair elections at reasonable intervals. In all such countries, the constitution itself provides an adequate method of redressing popular grievances. Against a government which provides no such means of defense against oppression, and particularly against a government carried on by foreigners, the people have a right to take up arms when these four conditions are verified: The government has become a tyranny and has for a long time inflicted serious and continuous injury on the community; peaceful means, including passive resistance, have proved ineffective against the tyranny; there is a reasonable probability

that the outcome of the armed conflict will be beneficial to the people; and the judgment concerning the tyranny of the government is shared by the larger and better portion of the community.[5]

The conclusions that emerge from the foregoing discussion may be summed up as follows: Every actual ruler has authority from God as regards the maintenance of elementary public order; when a government has become gravely oppressive, or degenerated into a tyranny, the people have a right to seek its reformation or its overthrow by passive resistance, and even by violent revolution in extreme situations; under a constitution which provides for effective popular consent, the citizens are obliged to support the government and obey all just laws; even where the popular will is not consulted in the choice of the ruler, the government has a just claim to the loyalty of the citizens so long as a change would not promote the common good.

As to forms of government, the Catholic doctrine is briefly stated in the following words from Pope Leo's Encyclical, *On the Christian Constitution of States:* "The right to rule is not necessarily, however, bound up with any special mode of government. It may become this or that form, provided only that it be of a nature to insure the general welfare." Hence a monarchy or an aristocracy, modified or unmodified, absolute or limited, may be quite as legitimate morally as a republic. All that is necessary is that the government "be of a nature to insure the general welfare."

[5] Cronin, *The Science of Ethics,* vol. ii, p. 542.

Generally speaking, the government will not be of this nature unless it enjoys some degree of popular approval, but the citizens are not justified in manifesting their disapproval by more extreme means than those which have been described in the foregoing paragraphs.

CHAPTER III

CONFLICTING LOYALTIES—CHURCH AND STATE

1. General Considerations

Neither in the political field nor elsewhere can there be a real conflict of duties. To suppose such a contingency is to deny the principle of contradiction. It is to assume that a thing can be and not be at the same time. If a person has a duty of doing a certain thing he cannot at the same time have a duty of doing something else which would render the preformance of the first duty impossible. Therefore, there can be no genuine conflict between proper loyalty to the state and proper loyalty to any other society, whether it be the Church, the family or some private association. When any person asserts the existence of such a conflict, what he really has in mind is an apparent conflict. He thinks that he sees two mutually irreconcilable duties when his whole difficulty is that he is unable to determine the end of one and the beginning of the other. In the relations between Church and state, as elsewhere, the problem of conflicting loyalties, so called, is always a problem of defining limits. Such apparent conflicts do arise with considerable frequency and some of them are of considerable importance.

Nevertheless, their existence and the resulting friction are entirely due to the lack of exact knowledge.

In the greater part of the respective provinces of the two societies, even apparent conflicts do not confront fair-minded and moderately intelligent citizens, for the division between them is easily perceptible. "The Almighty," says Pope Leo XIII in his Encyclical, *On the Christian Constitution of States,* "has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, the other over human things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right." To the extent that this distinction is perceived, there is no excuse for assuming a conflict between the citizen's duties to the Church and those which he owes to the state. If either power thrusts itself into the field belonging to the other, the act is one of usurpation and, obviously, imposes no obligation upon the citizen. There can be no question even of apparent conflict.

Unfortunately this is not the whole of the situation. There is a "twilight zone," or common ground, occupied by both societies in different ways for different ends. The authority of the state is not everywhere separated from that of the Church by a line which is as definite as the fixed boundaries between states. This is recognized and expressed by Pope Leo XIII in the following sentences:

But inasmuch as each of these two powers has authority over the same subjects, and as it might come to pass that one and the same thing—related differently, but still remaining one and the same thing—might belong to the jurisdiction and determination of both, therefore God, who foresees all things, and who is the author of these two powers, has marked out the course of each in right correlation to the other. *For the powers that are, are ordained of God.* (Rom. xiii. 1.) Were this not so, deplorable contentions and conflicts would often arise, and not infrequently men, like travelers at the meeting of two roads, would hesitate in anxiety and doubt, not knowing what course to follow. Two powers would be commanding contrary things, and it would be a dereliction of duty to disobey either of the two.

But it would be most repugnant to deem thus of the wisdom and goodness of God. Even in physical things, albeit of a lower order, the Almighty has so combined the forces and springs of nature with tempered action and wondrous harmony that no one of them clashes with any other, and all of them most fitly and aptly work together for the great purpose of the universe. There must, accordingly, exist, between these two powers, a certain orderly connection, which may be compared to the union of the soul and body in man. The nature and scope of that connection can be determined only, as we have laid down, by having regard to the nature of each power, and by taking account of the relative excellence and nobleness of

> their purpose. One of the two has for its proximate and chief object the well-being of this mortal life; the other the everlasting joys of Heaven. Whatever, therefore, in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has Himself given command that what is Cæsar's is to be rendered to Cæsar, and that what belongs to God is to be rendered to God.

All this is clear enough in principle. In practice the delimitation of the respective powers of the two societies has proved an extremely difficult problem for both churchmen and statesmen, with regard to a great many important matters for a great many centuries. When the two powers disagree in their interpretation of their respective rights in this common field, this "twilight zone," this realm of "mixed matters," which of them should prevail? Who is to make the authoritative decision? Since the Church pursues the nobler end, namely, the spiritual and eternal welfare of men, and since it is more competent to determine the temporal needs of the citizen than the state is to determine his spiritual needs, undoubtedly the Church is the better fitted of the two powers to decide the issue. This is the actual position taken by the Church. As Pope Leo points out, however, the Church does not always

insist upon deciding such disputes independently of the civil powers. She is willing to negotiate and even to effect compromise in cases which involve no question of principle. The establishment of more than fifty concordats between the Church and various states and, particularly, the concessions made by the Church in some of these treaties, show that the authorities do not always insist upon settling disputes of this kind by their own action alone.

Nevertheless, there are some matters falling within the jurisdiction of both powers about which the Church cannot compromise. The most important of these are education and marriage. The Church insists and must insist that religious training is an essential and, in fact, the most necessary element of education. Therefore she builds and maintains her own schools wherever the state institutions do not provide instruction in religion. Consequently she opposes legislation which would give the state a monopoly of education. As to marriage, she looks upon it as a sacrament and, therefore, as a matter that belongs peculiarly to her. Since the sacrament cannot be separated from the contract, she claims the right to fix the conditions of the latter, that is, to determine what conditions, whether of persons or of formulas and intentions, are necessary to make the contract valid. This authority she cannot surrender to the state.

Let us inquire now how far conflict is possible, not indeed between the moral obligations of the citizen to the Church and to the state, respectively, but between the laws of the state and those of the Church on these two subjects. Civil ordinances which disagree with

those of the Church may be of four kinds—preceptive, prohibitive, permissive and invalidating. The two former can produce genuine conflicts, that is, they can command something which the Church forbids, and vice versa. For example, the state might require all children, including Catholics, to attend schools which gave no religious instruction, or which inculcated false religious teaching, and it might forbid Catholics to have their marriages solemnized by a priest. Undoubtedly, the Church would oppose such regulations by all lawful and prudent means. Happily, the number of preceptive and prohibitive regulations which create such conflict is extremely rare in this country. The Oregon anti-private-school law was the only conspicuous instance in the field of education and it has been judicially declared contrary to the Constitution. The laws forbidding ministers of religion to perform the marriage ceremony between whites and colored persons in some of our states afford about the only example of direct conflict with regard to marriage. Nevertheless, our bishops and priests have exercised such prudence that few, if any of them, have ever been accused of violating the civil prohibition.

The vast majority of the preceptive and prohibitive laws enacted by the states of our union with regard to education and marriage raise no difficulty for the Catholic citizen. They are all necessary, or at least useful, for the public welfare. Therefore they constitute an exercise of civil authority in matters in which the state has a proper interest. Examples of such legislation are the laws requiring compulsory school attendance and setting up standards of competence in all

schools, and the laws forbidding clergymen to officiate at the marriage of persons who have not obtained a civil license, and requiring the officiating clergyman to return a record of the marriage to the proper civil official. Against regulations of this kind the Church can have no objection, nor can they produce any conflict between the civil duties and the religious duties of the Catholic citizen.

Permissive civil laws are incapable of giving rise to a genuine conflict, for the reason that the Catholic citizen is not legally compelled to take advantage of their provisions. Many differences between the Church laws and the civil laws with regard to marriage are of this character; for example, all the states of the American Union, except one, permit divorce and permit persons to marry whom the Church forbids to enter that relation. Catholics who do not utilize this privilege obviously violate no civil law. They are free to pass by or to take advantage of divorce laws and other enabling laws which are out of harmony with the legislation of the Church. The state permits what the Church condemns in these matters, but that situation creates no conflict of loyalties.

Invalidating statutes involve similar results. Civil laws which regard as invalid marriages which the Church permits do, indeed, produce difficulties, but they need not produce conflicts. For example, many states prohibit the marital union of persons under the ages of twenty-one and eighteen respectively, while the minimum ages according to Church law are somewhat lower. Should a priest officiate at the marriage of a boy and girl who were, respectively, twenty and

seventeen years of age, he would be acting in full accord with the law of the Church and the marriage would be canonically valid. It would be invalid according to the law of the state. If the latter did not prohibit a clergyman from assisting at such a marriage, there could arise no positive conflict between his civil and his religious obligations. The inconvenience would all be suffered by the contracting parties. They would be in the position of having done something which the civil law forbids but which the Church permits. They would be in a substantially similar position to the Catholic who goes through the ceremony of marriage while his divorced spouse is still living. He would be doing something which the state permits but which the Church forbids. In the former case, the citizen would disobey the state; in the latter case, the Church; but in no case does the law of one society compel disobedience to the law of the other. Hence there is no genuine conflict. Moreover, the inconveniences which lay persons may bring upon themselves by violating a civil prohibition of a marriage which the Church permits, are realized very rarely in practice; for Catholic priests invariably try to dissuade their subjects from contracting such unions.

2. Union of Church and State

Within the last year, we in the United States have heard a great deal about the conflicts between civil and religious loyalty which are thought to arise out of the Catholic doctrine on the union of Church and state. Even if this doctrine were universally applicable, the resulting "conflicts" would not be nearly so serious as those persons have assumed who mistakenly think that

it vitally affects American Catholics. In that hypothesis the Catholic citizen would be confronted by about the same difficulties and inconveniences that result from the discrepancies between the civil law and the canon law on the subject of marriage. The Church desires that marriage should be governed by certain regulations and endowed with certain qualities which the state does not accept. If the Church commanded a union of Church and state in our country, she would likewise be confronted by the refusal of the state to accept that arrangement. In this situation the Catholic citizen would not be forbidden by the state to do anything which the Church commanded; nor would he be required by the Church to do anything which the state forbade. Even if the Church were to require her subjects to strive by constitutional means for the union of Church and state, compliance would not bring them into direct conflict with any organic or statute law of the land.

Of course, the Church is not going to do anything of the sort. The American Hierarchy is not only well satisfied with the kind of separation which exists in this country but would oppose any suggestion of union between the two powers. No Pope has expressed the wish for a change in the present relation between Church and state in America, nor is any Pope likely to do so within any period of time that is of practical interest to this generation. The fundamental reason lies in the fact that a formal union is desirable and could be effective only in Catholic states. Only there does the Catholic doctrine on the union of Church and state find specific application. What is a Catholic state? It is a political community that is either exclusively or

almost exclusively made up of Catholics. A very high German authority, Father Pohle, declares that "there is good reason to doubt if there still exists a purely Catholic state in the world," and that the condemnation by Pope Pius IX of the public toleration of non-Catholic sects "does not now apply even to Spain or to South American republics, to say nothing of countries possessing a greatly mixed population." The following is his interpretation of the general rule, or general principle, on this subject: "When several religions have formally established themselves and taken root in the same territory, nothing else remains for the state than either to exercise tolerance toward them all, or, as conditions exist to-day, to make complete religious liberty for individuals and religious bodies a principle of government."[1]

Therefore, the Catholic citizen can conscientiously render full loyalty to the existing separation of Church and state, nor is he under any sort of obligation to strive for a union between them. Ignoring this decisive fact, more than one prominent person has within the last year adduced the general principle of union between Church and state as an evidence of conflict between the Catholic Church and the American State. The most conspicuous of these was Mr. Charles C. Marshall in his "Open Letter to the Honorable Alfred E. Smith."[2] His argument may be thus summarized: Pope Leo XIII declared it unlawful for the state "to hold in equal favor different kinds of religion," while the Constitution of the United States forbids Congress to make any

[1] *The Catholic Encyclopedia,* article, "Tolerance."
[2] *The Atlantic Monthly,* April, 1927.

"law respecting an establishment of religion or prohibiting free exercise thereof"; the same Pope denied that it would be universally lawful or expedient for Church and state to be, as in America, dissevered and divorced, but this is precisely the arrangement which is provided for in our Constitution; the Church claims the right to draw the line which separates its jurisdiction from that of the state, while the Constitution asserts that right for the state; finally, the Catholic Church claims the right to fix the conditions for the validity of all marriages of baptized persons, but the various states of the American Union claim and exercise this function.

The first two of these statements imply that American Catholics are required to believe that a union between their Church and state should be maintained in America. As already noted, this is a false assumption. The other two describe in theory and practice, respectively, the possibility of some kind of conflict between the Catholic Church and the American state. As pointed out above, however, a genuine conflict has rarely, if ever, occurred in their mutual relations; for the great majority of the differences between civil and canonical legislation on education and marriage do not exhibit contradictory commands. They consist in the fact that what the Church permits, the state invalidates, and what the Church invalidates or forbids, the state permits. The situations are extremely few in which the Church commands one thing and the state forbids that identical thing. Even in those very rare cases, Catholic citizens have been able so to conduct themselves, so to make concessions, that they

have not placed themselves in a position of violating the civil laws, with regard to either education or marriage.

To Governor Smith's reply that the Catholic doctrine on the union of Church and state does not apply to the United States and, therefore, that Catholic citizens find no conflict of loyalties, Mr. Marshall submitted a rejoinder. It was based upon certain questions and answers found in the *Manual of Christian Doctrine,* which is used in many Catholic secondary schools and colleges in the United States. The chief contentious propositions in this section of that work are: The state is subordinate to the Church in the spiritual order; the Pope has the right to annul civil laws contrary to the spiritual welfare or the natural rights of citizens; rulers of states are obliged to practice the Catholic religion as well as to defend it; the Church has the right and duty to proscribe schism and heresy; and, finally, the Church is superior to the state because of the superiority of its end.

All these propositions, except the last, are valid only in states which maintain a formal union with the Church. Therefore they impose no obligation upon Catholic citizens of this country. The last proposition is an evident truth for all who believe that the world of eternal and spiritual values is more important than the world of temporal and earthly values. In passing, it might be noted that when this *Manual* declares the state to be "subordinate" to the Church in the spiritual order, and the Pope has the right to "annul" civil laws, it is using inaccurate language. Since the state pursues a less important end than the Church, it may be said to be *inferior* to the latter, but it cannot prop-

erly be denominated "subordinate in the spiritual order," inasmuch as it has no place whatever in that order. "Subordination" implies a relation between persons or entities within the same province, whereas the Church and the state occupy different provinces. Similarly the word "annul" is badly chosen. Not only the Pope, but any individual is fully justified in disregarding a civil law which violates spiritual or natural rights, but the action is not accurately called "annulling." When Popes pronounced such laws "null and void," "without force," "of no effect," they were uttering moral decisions, not exercising or assuming civil jurisdiction.

As is evident, the portions of the *Manual* cited by Mr. Marshall contained no doctrine that he had not previously criticized in his original letter to Governor Smith. Every objection adduced from the *Manual* had already been answered implicitly, if not explicitly. In fact, Mr. Marshall admitted as much, but he used the *Manual* in the attempt to show, as he stated, that the doctrine of the union of Church and state is held by Catholics to have force in the United States, since it is "now being disseminated in high schools, academies and colleges throughout the land." Mr. Marshall pointed out that this book is now in its forty-eighth edition. Other unfriendly critics of the Church have emphasized the vogue which this text enjoys in Catholic educational institutions.

The wide use of the book in certain classes of high school, academies and colleges is a fact, but the inference which Mr. Marshall and the other opponents have drawn from this fact is not warranted. The offending questions and answers concerning the union of Church

and state are probably passed over by nine teachers out of ten. Certainly there is no evidence that any alumnus of the institutions using this *Manual* has imbibed the doctrine or acquired the opinion that the government of the United States, or of the several states, is bound to "proscribe schism or heresy." Why then does the book contain statements of this sort? Because it was not written in the United States but in France. The version which Mr. Marshall and other critics have seen is a translation. Why did the American translator retain these irrelevant questions and answers in the English version? I do not know. In any case, he exercised poor judgment and performed a distinct disservice to right understanding. Let us hope that this unfortunate oversight will be rectified in the forty-ninth edition.

3. The Syllabus

Another document which for many years has proved a source of difficulty with regard to the civic loyalty of Catholic citizens is the Syllabus of Erroneous Propositions issued by Pope Pius IX in the year 1864. This is a kind of index of false doctrines which had been previously condemned by Pope Pius IX and Pope Gregory XVI in apostolic letters, bulls, allocutions, constitutions and encyclicals. The authority attaching to the condemnation of these eighty propositions, together with the sense in which the condemnation is to be accepted, can be accurately ascertained only by consulting each proposition in the papal document from which it was drawn. The binding force and the precise meaning of a condemnation of any of these false propo-

sitions cannot be determined merely by reading it in the very concise form that it has in the Syllabus. For example, the seventy-seventh proposition reads: "It is no longer expedient that the Catholic religion should be established to the exclusion of all others." When we turn to the Allocution from which this is taken, we find, to quote Cardinal Newman, that "the Pope was speaking not of states universally but of one particular state, Spain" . . . and that "he was protesting against the breach in many ways of the Concordat on the part of the Spanish Government."[3] Failure to consult the original source of the Propositions in the Syllabus has been responsible for a great majority of the misconceptions and unjust attacks which it has suffered.

Another great mistake is to assume that the condemnation of an erroneous proposition implies the assertion of the contrary proposition. In many cases it is not the contrary but the *contradictory* of a condemned proposition which is to be accepted as true. The difference can be readily illustrated. "Every Irishman has red hair" is a universal proposition. When I assert that it is false I do not imply the truth of the contrary. I do not mean to say that no Irishman has red hair. Obviously my meaning is that not every Irishman has red hair. It is in this sense that we are to understand the condemnation of propositions fifty-five and seventy-seven. The former declares that "The

[3] *Letter to the Duke of Norfolk,* ch. vii. This chapter, entitled "The Syllabus," is undoubtedly the ablest, the most comprehensive and the most convincing refutation of objections against the Syllabus on the score of civic loyalty that has ever been written. While it has direct application to Great Britain, being a reply to an attack made by Hon. William Ewart Gladstone, it is fully applicable to conditions and controversies in the United States.

Church must be separated from the state and the state from the Church," while the latter reads, "It is no longer expedient that the Catholic religion should be established to the exclusion of all others." The contrary of these propositions would be, respectively, that the Church must *never* be separated from the state and that the Catholic religion must *always* be the only one permitted by the state; contradictory propositions would be, respectively, that the state must not *always* be separated from the Church and that the Catholic religion may sometimes be protected by the state to the exclusion of all others. It is in this sense that the two erroneous propositions were condemned. Only he could logically object to the condemnation of these propositions in this sense who believes that the union of Church and state should under no circumstances, nor in any society, not even in a community exclusively Catholic, be maintained. This is pure and simple nonsense.

The honest and intelligent non-Catholic who keeps in mind the foregoing rules and interpretations will find in the condemnations specified in the Syllabus nothing which involves a conflict of loyalties in the mind of a conscientious Catholic citizen. The former will himself reject many of these erroneous propositions. Several of them may, at first sight, seem reasonable and in accord with his own views, but in their original context they too will be judged unacceptable. For example, proposition eighty, the last in the list, declares that "the Roman Pontiff can and ought to reconcile himself and come to terms with progress, liberalism and recent civilization." The Pope condemned this proposition, and rightly, because what it

really approves is, in religion—atheism; in politics—the omnipotent state; and in society—unlimited freedom to propagate every kind of doctrine, no matter how immoral.

4. Ethical Interpretations

In the foregoing paragraphs, we have dealt with the possibility of conflicting loyalties which arise from differences between the constitutional and statutory enactments of the civil and the ecclesiastical powers. We have been comparing the general laws of the Church with the general laws of the state. In addition to the differences and possible conflicts which occur in this field, we must consider those which are latent in the action of the Church as interpreter of morals and guide of Catholics in the application of general laws and principles to the particulars of conduct. In the performance of these functions, the Church, popes, bishops and priests might feel called upon to require Catholic citizens to disobey a civil law or to advise them that certain civil enactments have no binding force in conscience. It is this possibility rather than any contained in the general laws of the Church which gives most concern to intelligent and fair-minded non-Catholics.

In purely political matters, the Church has no right whatever to issue commands or to give official advice. Let us recall here the words of Pope Leo XIII which were cited in a preceding chapter. Speaking of the civil and ecclesiastical powers, he says, "Each in its kind is supreme." Therefore the state is supreme in its own province and the Church is without moral authority to intervene in matters which are exclusively political

and involve no violation of the moral law. Archbishop Ireland once declared that to any priest, bishop or pope who should attempt to influence the citizen in purely civil affairs he would promptly reply: "Back to your own sphere of rights and duties, back to the things of God." In similar vein, Bishop England declared that Catholics deny the right even of a General Council to make any encroachment upon the Constitution of the United States or to interfere in the mode of electing even "an assistant to the turnkey of a prison."

With regard to civil laws or proposals for laws which have moral aspects, which involve questions of right and wrong, the Church obviously has the right and the duty to direct the Catholic citizen. Just when this direction should or will be given, and the particular forms that it may take, depend upon a great variety of practical conditions. The "twilight zone" described above provides one field for the moral guidance of the Catholic citizen by his religious superiors. Had the anti-private-school law of Oregon been sustained by the Supreme Court as constitutional, the authorities of the Church would have been confronted with the question whether they should advise the Catholic citizens of that state to disobey the law and to continue sending their children to parochial schools. Were they to give such direction, they would obviously have to disobey the law themselves by maintaining the proscribed educational institutions. Whether the responsible authorities would have adopted this course in that contingency is a question that need not now be answered. For our present purpose, it is sufficient to state with all positiveness that the bishops of Oregon, as well as the other bishops

of the United States, would regard this law as a violation of the most sacred natural rights of parents and would feel justified in disregarding it and advising or commanding their people to do the same, if they considered that to be a prudent course.

In other matters than those of education and marriage, such conflicts are possible between the loyalty of the Catholic citizen to a civil statute and his loyalty to the moral law. The supposition is fantastic, but not inconceivable, that one of our states should enact into law the economic system known as Socialism and enforce it with utter disregard of property rights. In that contingency, the Church authorities would have no hesitancy in pronouncing the arrangement a violation of natural rights and in advising Catholic citizens that they were not obliged to obey. Whatever may be said of the morality of the Eighteenth Amendment to the Constitution, certain provisions of the Volstead Act seem to be a clear violation of natural rights; for example, those which forbid a citizen to possess intoxicating liquor or to give a drink to his friends. It is quite possible that a bishop or priest might advise the Catholic citizen that he was not obliged to obey these prohibitions. Certainly this is the advice which I should give if I were consulted.

The foregoing examples will suffice to illustrate the possibility of conflict which arises when the Catholic citizen asks or receives instruction or commands from his ecclesiastical superiors on the question whether a civil enactment is contrary to good morals. In these contingencies, the Catholic citizen is not in an essentially different position from the non-Catholic who

rejects the principle that the state can do no wrong. In both cases the decision will finally be made by the citizen's conscience. In forming his conscience, that is, in considering what decision a right conscience ought to make, the non-Catholic citizen will pursue a somewhat different course from the Catholic. He will consult the minister of his denomination, perhaps, or his Bible or some other person or book. The good Catholic will consult his bishop or priest, or authoritative works on ethics. In the end each will be compelled to decide the question for himself in the light of what helps he has received and according to his own best judgment, that is, according to his conscience.

Nevertheless, many non-Catholics raise the objection that the position of the Catholic citizen is substantially different from that of the loyal citizen outside the Church, inasmuch as the former is influenced to a much greater degree by priests, bishops and popes than is the non-Catholic by any kind of ecclesiastical authority. Undoubtedly this is a fact, but it is an irrevelant fact. Unless it can be proved that a priest, bishop or pope is peculiarly biased against civil laws, there is no reason to assume that his decisions will be more unfavorable than the decisions of non-Catholics.

Sometimes the objection takes the following form: The ultimate moral authority for the Catholic citizen is the Pope, but the Pope is a foreigner who necessarily lacks the desired amount of sympathy with the United States. To this curious prejudice—for it is fundamentally that—two replies come easily to mind. The first is that in the very rare instances when the Catholic citizen seeks or receives guidance from his

Church authorities about civil laws which involve moral issues, he does not go to the Pope. In the very great majority of such cases, the advice, or the direction, is given by the parish priest or by the local bishop. The Pope has a great many other matters to occupy his time than particular moral questions affecting a limited area of his territory. Had the Oregon anti-private-school law gone into effect and had Catholic citizens of Oregon been directed to oppose it, the order would not have come from the Holy See but from the bishops exercising jurisdiction in that state. In other words, the decisive action would have been taken by Church authorities who are American citizens. In the second place, the Pope is no more a "foreigner" to the people and laws of the United States than he is to those of every other country in the world. Therefore, he is without nationalistic prejudice against the government of any country. Indeed, it is precisely because his position makes him independent of all political allegiance that he is competent and disposed to render absolutely impartial judgment in all matters which involve the moral aspects of civil legislation.

The principle which has been set forth and defended in the foregoing paragraphs, namely, that when a civil law contradicts the moral law the citizen is obliged to disregard it, is accepted not only by Catholics but by all non-Catholics who reject the doctrine that the state can do no wrong. Unfortunately, persons holding the latter view are to be found even in the United States, and they are not all atheists nor persons without church affiliation. Dr. Hiram W. Evans, Emperor and Imperial Wizard of the Knights of the Ku Klux Klan, assuming

to speak not only for himself but for all Protestants, makes the following statement: "We Protestants have no conscientious scruples about obeying laws nor any need to ask our conscience whether or not we will obey. . . . Protestant churches, like all voluntary organizations, exist only by permission of the government, are subject to it, honor it, and recognize that the government holds, if the need should ever arise, the right to dissolve and outlaw them."[4] Mr. Charles C. Marshall does not go so far explicitly; nevertheless the doctrine of state omnipotence seems to be implied in this statement: "You cannot have two perfect sovereignties in one territory without the conflict of jurisdiction always imminent. The Roman Catholic Church in the theory of the two powers has sought by every careful word to delimit the jurisdiction of each and the defining has been a failure along the course of history." Happily, these views concerning the absolute right of the state to command obedience for any kind of law that it chooses to enact are not shared by all American Protestants. Probably they are rejected by the majority. In his valuable work, *Christianity and the State,* the Rev. S. Parkes Cadman writes: "To-day multitudes of Protestants realize that there is a higher life of democracy; a greater command than that of the state; a nobler obedience and a purer service than any political rule can rightly command." Referring to the doctrine of the union of Church and state, the Rev. Justin Wroe Nixon, Pastor of the Brick Presbyterian Church in Rochester, New York, wrote as follows:

[4] *The Kourier Magazine,* July, 1927, pp. 20, 25.

> The most casual student of the doctrine discerns in it a protest—a protest against the absolute state, against the arrogance of a secular nationalism, which our generation needs to hear. We need to know that the State is not above the moral law and that there are elementary human rights which, under God, the State is bound to respect. Italy and Russia both illustrate how brutally indifferent to those rights the State may be. No fiction of absolute sovereignty in an independent world can exempt the State from its obligations to mankind. The State which bullies a weak nation is just as guilty in the eyes of God as the man who takes advantage of a helpless neighbor. The gravest danger to individual liberty in our time, moreover, does not come from any threatened invasion of the rights of the State by the Church. It comes from an impudent Cæsarism which maintains that the State can do no wrong, that it is above criticism, that all its wars are righteous—claims which are blasphemous to religious men regardless of denominational affiliation. The State can be and is a grievous sinner and needs to repent. The Roman Catholic Church has taught this truth for centuries, and it is to be hoped that it will keep on teaching it.[5]

The most important conclusions issuing from the discussion in this chapter may be summarized as follows: No genuine conflict can occur between a moral duty to the state and a moral duty to the Church. Some-

[5] "Before Catholics Yield," *The Atlantic Monthly*, July, 1927.

times, however, obedience to the one may involve disobedience to the other. Since neither permissive nor invalidating civil laws impose either commands or prohibitions, they cannot produce a conflict between the civic and the religious loyalties of the citizen. They leave him quite free to disregard them, whether or not they be in harmony with the laws of the Church. Preceptive civil laws may sometimes ordain what the Church forbids and prohibitive civil laws may sometimes forbid what the Church commands. In both cases there will arise a conflict of loyalties for the Catholic citizen. In the United States actual conflicts are extremely rare. The vast majority of civil commands and prohibitions have to do with matters about which the laws of the Church have nothing to say. Finally, the situations in which the Church authorities advise or command the Catholic citizen to disregard a civil command or a civil prohibition occur so rarely that they do not account for one in one hundred million of the total number of instances in which the civil laws are violated. Indeed the best proof that no real conflict exists or is likely to exist between Church and state in this country is the fact that, during all our history as a nation, no considerable group of Catholics has ever been seriously accused of actual civic disloyalty.

CHAPTER IV

THE BINDING FORCE OF CIVIL LAW

As we have seen, the state is an institution which is necessary for human welfare. It has authority from God, because God so made human beings that without it they cannot live reasonable lives, develop their personalities, nor attain the end for which they are destined. Now the state cannot perform its functions, cannot promote the common good, unless its members give it their coöperation and loyalty and obedience. Hence they are bound to it by moral obligations. That is, they are under reasonable constraint to obey the state, not merely from fear of legal punishments, but under penalty of sin. Disobedience involves not merely legal wrong, but moral wrong. The classical version of the Christian teaching on this subject is found in the opening sentences of Chapter XIII of the Epistle of St. Paul to the Romans: "Let every soul be subject to higher powers; for there is no power but from God; and those that are, are ordained of God. Therefore, he that resisteth the power, resisteth the ordinance of God. And they that resist, purchase to themselves damnation. . . . Wherefore be subject of necessity, not only for wrath, but also for conscience' sake."

The most recent authoritative statement of the doctrine is to be found in the Encyclical of Pope

Leo XIII, *Sapientiæ Christianæ:* "Hallowed, therefore, in the mind of Christians is the very idea of public authority, in which they recognize some likeness and symbol, as it were, of the Divine Majesty, even when it is exercised by one unworthy. A just and due reverence to the laws abides in them, not from force and threats, but from a consciousness of duty; for God hath not given us the spirit of fear."

The state performs its functions through the enactment and the administration of law. It is through law that every civil act is authorized, whether in the executive, the legislative or the judicial department. To obey the state means, therefore, to obey civil legislation.

According to the unvarying teaching of the Catholic Church, the civil law binds in conscience, as such, not merely because it may happen to include enactments which are already found in the law of nature or Revelation or the Church. Civil law has moral validity on its own account because the state possesses original moral authority. The reasons why civil law has within itself the power to bind the conscience are those summed up by Francisco Suarez, S.J., the greatest writer on law among Catholic theologians: The civil legislator makes laws as the minister of God; he is required to do so by the natural law; this power and its exercise are necessary for the common good.[1] In its exercise of this inherent moral power, the state is independent even of the Church. This is clearly implied in the words of Pope Leo XIII, already quoted, to the effect that each of the two societies, the state and the Church, is "in its kind supreme . . . so that there is, we may say,

[1] *De Legibus,* lib. iii, cap. 21.

an orbit traced out within which the action of each is brought into play by its own native right." These words occur in the Encyclical on *The Christian Constitution of States.* The same Pontiff asserts the same doctrine more specifically in his Encyclical, *Sapientiæ Christianæ:* "The Church alike and the State, doubtless, both possess individual sovereignty; hence, in carrying out of public affairs, neither obeys the other within the limits to which each is restricted by its constitution."

All valid civil law is based ultimately on the natural law. It is either a reaffirmation of natural law, as exemplified in the statutes forbidding theft, assault and adultery, or an application of its precepts, principles or conclusions, as in statutes which determine individual property rights, impose taxes and regulate traffic on streets and roads. In the latter class of cases, the civil law makes definite and applies principles of the natural law which are too general to be immediately evident and binding in themselves. For example, other property regulations and traffic regulations than those actually prescribed by any state might be in harmony with the general principles of the natural law. The function of adopting one set of statutes rather than another belongs to the state. Its right to perform this function is based upon the fact that it is the only competent agency existing for that purpose. The obligation of the citizens to observe such regulations is based ultimately on the natural law, but immediately and formally on the authority of the state.

In legislating for the common good, the state has the right to pass laws which are merely useful as well as those which are clearly necessary. And it has the

right, within reasonable limits, to determine among several useful enactments which one is preferable. It is not always obliged to choose the best. This freedom of choice on the part of the state is necessary for the common good. To assume that the state lacks this liberty would be to assume that the choice among several suitable legislative measures rests with some authority outside the state. Of course, no such authority exists. The competence of the state extends not merely to the general function of legislating but to that of determining the precise legislative methods and measures which are to be adopted to meet any given public need. Therefore, every law enacted by a legitimate government, whether it be evidently necessary or merely useful, is in some degree morally binding on the citizens.

"In some degree morally binding on the citizens." This phrase suggests a question which is raised in every Catholic work on the obligatory force of civil laws: To what extent are civil laws "purely penal," and the obligation attaching to them merely disjunctive or conditional? Discarding refinements of definition, which need not be noticed here, we mean by a "purely penal" law one which gives the citizen the option in conscience of obeying it, or of disobeying it and willingly accepting the penalty appointed for its violation. The concept of "purely penal" law is very ancient and is not restricted to canonical or ethical treatises. Blackstone attributed this character to "the statutes for preserving game" and those forbidding the exercise of "trades without serving an apprenticeship thereto," and in general those which are of such nature that "the

penalty inflicted is an adequate compensation for the civil inconvenience supposed to arise from the offense.[2]

For the most part Catholic moralists have used this test (which indeed was derived by Blackstone from the traditional Catholic moral teaching on this subject) to determine what classes of civil law might be made "purely penal." Recently it has received a very liberal interpretation at the hands of a prominent Catholic moral theologian and canonist, the Rev. A. Vermeersch, S.J. "To-day the opinion has probability that only those laws immediately bind in conscience which need to have this force to safeguard the common good."[3] All other laws are "purely penal," imposing no obligation upon the citizen except that of not trying to evade a fine or a term in prison after he has received judicial sentence. It should be noted that Father Vermeersch cites only a few authorities, none of them weighty, in favor of his opinion.

The practical objections to this rule are sufficiently grave to deprive it of any validity that it might appear to have in theory. It would enable the individual citizen to persuade himself that scarcely any civil law is binding in conscience. When he is confronted with an irksome ordinance, he asks himself whether the end of the law and the common good would be sufficiently safeguarded if the distasteful statute were to be observed only by those who feared arrest and punishment. Experience can give him no reliable assistance because he does not know what proportion of the citizens now obey from a sense of duty, nor what pro-

[2] *Commentaries*, vol. i, sec. 58.
[3] *Theologia Moralis*, tome i, no. 178.

portion from a sense of fear, nor what proportion from sheer indifference. Therefore, he can never be certain whether the majority of laws would be sufficiently observed if all the citizens accepted them as not binding in conscience. He might have a strong doubt on the subject but he would probably resolve the doubt in favor of his own convenience. In so doing, he would have the direct authorization of Vermeersch, who says that in case of doubt the presumption is against the moral obligation of civil law.

In practice, this rule would be equivalent to the principle that civil laws bind only in so far as they are accepted by the people. This is in open conflict with Catholic teaching, which holds that legislative authority rests not in the people but in their civil superiors.

Indeed, the logic of Father Vermeersch's rule would render all civil laws superfluous. If the citizens are free to disobey a statute whenever they judge that it does not need to have moral obligation in order to safeguard the common good, why is it not reasonable to say that the citizens may safely be permitted to follow such courses of conduct as in their opinion will be consistent with public welfare? Thus the entire machinery of lawmaking might be abolished. Positive and definite directions by civil superiors would be unnecessary. Folkways established by custom would provide all the guidance required by the common welfare.

The assumption that anti-social laxity would be prevented if the average citizen assumed the obligation of consulting ethical and political authorities on the question whether a given law might safely be violated,

is without solid foundation. There are not sufficient experts in existence to give more than a fraction of the necessary advice. For it must be kept in mind that Father Vermeersch applies his rule not to a few civil laws but to the great majority.

The reasons upon which he bases his rule are far from convincing. He declares that in our time the civil legislator can provide for adequate observance of the law through the police and the judiciary. This is, for the most part, untrue in the United States. In the second place, he refers to the "intolerable burden" that would be borne by the citizens if the multitude of laws on the statute books to-day were all binding in conscience. There is much exaggeration in this view; for the number of civil laws which practically constrain any one person is relatively small. Again, he quotes the saying that "custom is the best interpreter of law," and declares that to-day most persons regard the greater part of civil legislation as not binding in conscience. The statement of fact is highly doubtful, while the maxim quoted is subject to a very considerable reservation. Custom is an authoritative interpreter of the binding force of law, only in so far as it reflects the mind of the legislator. If the latter does not wish a law to be regarded as "purely penal," the judgment of the citizens that it is or ought to be of that character has no authority whatever. There is no evidence that civil legislators generally are willing that the laws should be so construed. Finally, Father Vermeersch maintains that modern legislators do not as a rule believe in genuine moral obligation, or care whether their enactments are regarded as

obligatory by the citizens. It may be conceded that our lawmakers do not have a formal and explicit intention of making their statutes binding in conscience. On the other hand, there is no evidence that they ever deliberately desire the laws to be "purely penal." What they do intend is to make a genuine law, an enactment that will have all the qualities of valid legislation; therefore, they *implicitly* desire it to have moral validity. According to substantially all Catholic authorities, an implicit intention of this sort is sufficient to clothe the law with genuine moral obligation.[4] The average legislator might indeed think very little about true moral obligation, but if he were asked whether he desired the people to look upon the law as binding their consciences, he would undoubtedly answer in the affirmative.

The reasonable view seems to be that there is always a presumption in favor of the moral constraint of civil law. Of course, this presumption can be set aside by facts and valid arguments. Undoubtedly, civil legislators have the power to make some of their enactments "purely penal," that is, those which can with safety be given this character. However, there is no good reason to assume that the number of such laws exceeds more than a small minority. Indeed, the very notion of "purely penal" law is unknown to the vast majority of our legislators. How then can it reasonably be maintained that the average legislature intends any of its enactments to bear this peculiar interpretation?

A much simpler and more practical method of protecting one's self against an undue burden of moral

[4] *Cf.* Ryan and Millar, *The State and the Church*, pp. 251, 252.

obligation is to accept the statute as binding in conscience according to its spirit and end rather than in strict conformity with its specific terms. For example, the spirit and end of a law which fixes a maximum limit of speed for automobiles might be fully observed and attained, although the letter of the regulation had been violated. And in most cases this sort of loyalty to the law would satisfy the mind and intention of the legislators. To be sure, this method imposes upon the citizen the obligation of taking the statute seriously and being morally certain that his departure from the letter really does safeguard the spirit. Again, there is always available the device of "epikeia," which justifies the citizen in assuming that a law which imposes an unreasonable burden upon him could not have been intended for a man in his situation. Always, however, the presumption favors the law and the citizen can remove it only by opposing considerations of *proportionate weight and importance.*

The question concerning the *gravity* of the obligation attached to civil laws is answered on the basis of general principles. If the subject matter is of a grave importance, the obligation of obeying the law will always be grave, unless the legislator explicitly desires it to be slight. On the other hand, the legislator cannot make gravely obligatory a law which is of less than grave importance.

An unjust law has no validity in morals, nor any binding force in conscience. Injustice in a statute may take two forms: It may command a violation of the moral law, or it may merely disregard a human right. An example of the first kind would be a law forbidding

a man to pay his debts, or commanding him to steal. A law which merely violated rights would be exemplified in the abolition of private property. Immoral enactments of the former kind could never be conscientiously obeyed by any citizen. Laws which merely violated rights might be observed with a good conscience, if that seemed to be the smaller of two evils. Obviously, however, there could be no moral obligation to observe such enactments.

This evidently reasonable doctrine unduly disturbs some good persons in our country, and probably in other countries as well. They think that it is unsafe, because it would make the individual citizen the judge of the rightness or wrongness of civil laws. It is safer, they think, to cling to the general proposition that all laws must be obeyed. No such harsh alternative is necessary or justified. The conscientious citizen will not lightly assume that any civil law is unjust, much less that it violates his rights. He will examine the question carefully and will seek guidance from those who may be more skilled than he in deciding questions of this kind. To require of the citizen more than this, to impose upon him a blind obedience to all civil laws, is to convert state omnipotence or state tyranny into a moral principle.

A certain modification of the principle just criticized is frequently enunciated by men in American public life. It is that the proper way to get rid of a bad law is to enforce it, thus making it so irksome that it will quickly disappear from the statute books. Implied in this recommendation is the assumption that until the law is repealed it has a right to command as great a

degree of obedience from the citizen as though it were useful and reasonable. No adequate arguments can be brought forth to support this assumption. The number of laws that have become nullified through sheer popular disregard, through the creation of contrary customs, has in every age and every country been large and impressive. It is not always reasonable to require men to observe irksome and unjust regulations until such time as the remedy of legal repeal becomes available. Sometimes active disobedience by an outraged minority is necessary to compel the majority to give heed to the evil which the law inflicts; nor does this method necessarily contain any serious threat to the majesty of law or the principle of law observance. The following sentence, uttered not long ago by Senator Borah, is a grave exaggeration of the facts and probabilities: "If the time ever comes when a provision of the fundamental law under which we live is scoffed at, derided and denounced, nullified, and still permitted to remain a part of the Constitution, that in my judgment will be the final impeachment of constitutional government." If this sentiment had been expressed by any one occupying a less distinguished place than its author, we should feel justified in dismissing it as stilted and solemn nonsense.

CHAPTER V

THE DUTIES OF THE PUBLIC OFFICIAL AND THE PRIVATE CITIZEN

So important are the relations of its members to the political community that they give rise to a special kind of justice. This is known in Catholic treatises as legal justice. It binds all members, officials as well as private citizens or subjects, to render to the community that which is due for the sake of the common good.

The duties imposed upon public officials by the virtue of legal justice may be summarized as follows. In all their official acts they are bound to prefer the public good to their private advantage. Hence, they must not accept bribes, nor "graft," nor any other form of private gain at the expense of the public welfare; nor may they receive such favors on behalf of their friends. In the enactment and administration of law, they must always prefer the common good to the good of individuals, and treat all individuals with exact justice. This means, moreover, that no social class should be favored to the detriment of the general welfare, and that no class should receive less than its due proportion of public protection and assistance. "Among the many and grave duties of rulers who would do their best for the people, the first and chief is to act with strict justice—with that justice which is called by the

schoolmen, *distributive*—toward each and every class alike." Thus spoke Pope Leo XIII in his Encyclical on *Labor*. In the same document he declared that the weaker classes have an especial claim upon the protection and solicitude of the state. "And it is for this reason that wage earners, who are undoubtedly among the weak and necessitous, should be especially cared for and protected by the government."

In general, public officials are obliged to possess an adequate knowledge of what constitutes the common welfare and of the means by which it is best promoted. Good will and right motives are not a sufficient equipment for public service. Only in local governments and subordinate positions are common honesty plus common sense adequate. In all the more important public positions a considerable amount of special and specific knowledge is necessary for the proper discharge of official obligations.

The duties of the private citizen may be classified as general and particular. His general duties comprise chiefly respect for and loyalty to public authority. These obligations are due both to public officials and to the civil laws. They are quite as proper and necessary in a republic as in a monarchy. As individuals, public officials are sometimes lacking in personal worth and dignity, but, as the custodians of political authority, they have a right to consideration and respect. The man who refuses these to civil authority, through a false notion that they are unworthy of a free man, exhibits the mind and temper of a slave. He has not sufficient confidence in his own worth to realize that he can afford to give honor where honor is due and to

recognize the superiority which attaches to the holder of public authority.

While loyalty is closely connected with obedience, it adds the concepts of intensity, emotion, spontaneity and constancy. The loyal citizen is always ready and eager, not only to obey the laws, but to support and maintain the political institutions of his country. Loyalty habitually recognizes that a presumption exists in favor of the organic and statute laws and their underlying principles. On the other hand, the conception of loyalty is perverted when it is used, as frequently in the United States since the Great War, to condemn all attempts to change the Constitution. Since the Constitution itself contemplates and provides for modifications, the effort to bring about any particular change may exhibit quite as much loyalty to that instrument as an attitude of habitual reverence for its present provisions. A still greater perversion occurs when citizens are accused of disloyalty because they criticize our existing industrial institutions.

The specific duties of the citizen may be conveniently grouped under two heads: Those which exist under all forms of government and those which are found only in a state that possesses a republican form of government. The most important duties of the former class are connected with taxation and military service. According to the traditional Catholic teaching, tax laws bind in conscience. Since the government cannot perform its functions without revenues, and can obtain these only through taxation, the citizens are morally bound to provide the needed funds in this way. And the majority of Catholic authorities hold that this

obligation is not merely one of legal justice, but of strict or commutative justice. In other words, it binds men to restitution when it is violated.[1] The reason is obvious. When citizens fail to pay taxes, or to pay their proper amount of taxes, they injure either the state or their fellow citizens. Usually the injury falls upon the latter, since the state can provide for a deficiency in revenue by raising the tax rate. Consequently, those citizens who pay less than their proper quota are the direct means of compelling their fellow citizens to pay more than an equitable share.

This, the traditional Catholic teaching, is rejected by Father Vermeersch, who contends that to-day it is lawful to hold that tax laws are "purely penal."[2] However, his reasons for this view are no more convincing than those which he alleges on behalf of the general proposition that only those laws are binding in conscience which must be so regarded in order adequately to safeguard the common good. In the main, they are the same reasons. The two allegations upon which he lays particular stress are exposed to obvious objections. Even if the common opinion of citizens denied a true moral obligation to pay taxes, it would not, of itself, annul the obligation. Common persuasion has no authority in this matter, except in so far as it reflects the will of the legislature. For this assumption there exists not a particle of evidence. Everything that we know about the situation points to the conclusion that the legislators wish tax laws to have all the force, moral as well as coercive, with

[1] Bouquillon, *Theologia Moralis Fundamentalis*, pp. 460-463.
[2] *Op. cit.*, tome ii, no. 567.

which any law can be clothed. As for the assumption that the object of tax laws is adequately attained even when they are generally held to be without morally binding force, it is likewise unsupported by any positive evidence. Indeed all the evidence available testifies to the contrary.

It is frequently asserted that tariff duties and internal revenue laws are "purely penal," but the only reason generally alleged is that they are so regarded by the people. This view is clearly inapplicable to the United States. There is no evidence that the makers of these laws are willing to have them construed as "purely penal." In the absence of such legislative consent, the popular interpretation has no value whatever. The people are not the legislators. In the second place, those Americans (and they may constitute a majority of our adult population) who regard internal revenue and tariff laws as devoid of moral obligation do not base that judgment on the assumption that these statutes are "purely penal." The average American has never heard of that term and has no notion of its signification. When he interprets these regulations as having no obligatory force he does so because he thinks that they are unnecessary or that they are in many of their features unjust, particularly as applied to situations like his own. My own opinion is that the tariff statutes are in the main both unnecessary and unjust; hence, I regard most of them as not binding in conscience. Certain other tax laws, particularly those imposed upon the necessaries of life and some of those affecting personal property, I would put in the same category. But

I would do so because they are unjust, not because the "purely penal" concept has any pertinent application. It seems to me that clear thinking and correct moral conclusions would be immensely furthered if that concept were incontinently expelled and excluded from discussions of the binding force of civil law.

Perhaps the most astonishing example alleged of a "purely penal" tax law is the levy upon inheritances. If there is one form of taxation more clearly just than any other, it is surely this. It takes from property that a man has not yet enjoyed and for which he has not paid, thus inflicting a minimum of hardship; it is imposed only on large estates, thus conforming in the highest degree with the economic and ethical canon of capacity to pay, and it carries the incidental social benefit of tending to correct the inequalities of wealth.

Instead of consulting or following lax popular notions about the moral validity of tax laws, and instead of playing with the antiquated and impracticable theory of "purely penal" enactments, the conscientious citizen will ask himself whether the fiscal contribution for which he is legally liable is just. He will take as his guiding principle the canon just mentioned, namely, that taxes ought to be levied in proportion to ability to pay and comparative sacrifice. This is distributive justice. And he will compel himself to find good reasons for reaching the conclusion that any tax law causes him to suffer injustice. He will not lightly assume this to be true, nor will he permit himself to be guided by the laxities or dishonesties of his neighbors, either in theory or in practice. He will pay all that he would be called upon to pay by a just law which

was universally observed. This means that he will be more honest than some of his neighbors, indeed, but what of it? The virtuous man does not complain that he is the victim of undue hardship because his neighbors are sinners.

To be sure, where the custom is widely spread of understating one's property to the fiscal authorities, the conscientious citizen is perfectly justified in reducing his statement in proportion to the general practice. For example, if one half the taxes due on intangible property is evaded by the majority, a citizen who should pay the full amount would be contributing twice what is fairly due from him.

The citizen is not bound to pay taxes until the amount for which he is liable has been somehow determined by the fiscal authorities. However, the method of defining individual levies differs considerably according to the nature of .the property. The income tax laws require the citizen not only to fill out the blank which is sent him, but to notify the authorities whether his income is large enough to come within the scope of the law. Both these requirements are reasonable and required by public welfare. In the case of personal property, the taxpayer likewise receives a blank in which he is required to describe his taxable property. When he has done this, the amount of his taxes is defined. Sometimes the fiscal authorities examine and assess the property independently of any statement by the owner. In these cases he cannot know how much he ought to pay until he has been notified. The general principle is the same in all situations. The citizen is obliged to pay his taxes when they become due and

when, in accordance with the provisions of the law, he becomes aware of the amount. Whether this knowledge is obtained with or without his own co-operation is a question that does not affect his obligation.

Here, again, Father Vermeersch defends the laxer view. He maintains that there is no obligation upon the citizen to make statements concerning the amount of his taxable property, and that the laws requiring this are "purely penal." The reply to this contention is the same as that given above, namely, that the public good requires the citizen to obey this law, and that there is not sufficient evidence to show that public welfare can be adequately safeguarded through any milder interpretation.

In many cases, laws requiring military service from the citizen in times of peace are binding in conscience. The reason is, the public good. "In many cases," because more than one country has established universal conscription for military service in situations where it was not necessary for the national safety, and even when it was nationally harmful because of its provocative effect upon foreign countries. In such situations, the obligation does not exist. As elsewhere, however, the presumption is in favor of the law. Like any other presumption, it can be overthrown only by positive facts to the contrary. When one's country is at war, the obligation of military service is generally clearer and graver than in time of peace. When one's country is engaged upon an unjust war, one is not only not obliged but is not permitted to enter the army or the navy. But no individual should conclude that this is

the truth of the matter without serious and honest investigation and consultation of competent authority.

The second class of duties incumbent upon the citizen arises from his position under a republican form of government. In such a state legislation and administration depend finally upon the intelligence and morality of the voters. Through their exercise of the electoral franchise, they determine whether the laws will be just and the administration honest and efficient. Unfortunately, the significance and the gravity of their duties as makers of the government are frequently ignored by Catholics, as well as by other citizens. This is particularly true of the United States. In more than one of our great cities gross and scandalous municipal corruption has been conspicuously promoted or condoned by the Catholic portion of the electorate. Nor have their civic duties always been adequately expounded to Catholic voters and Catholic officeholders by their responsible teachers. A large proportion of American Catholics have been dominated by the "psychology of persecution." They have looked upon government distrustfully and have easily inclined to minimize their civic responsibilities or to assume an attitude of cynical indifference. Many of them have either held aloof from active participation in political life or have permitted their political influence to be misused by special and unworthy interests.

The Catholic teaching on this subject may be summed up as follows:[3] Legal justice obliges the citizen who possesses the franchise to take part in the civil elections. As always, when the citizen is said to be bur-

[3] Tanquerey, *de Justitia,* pp. 475-477.

dened with an obligation, the reason is the common good. The persons who are elected to legislative and administrative offices have power over not only politics, but social, industrial, educational, moral and religious matters. Since public legislation and administration affect many subjects of grave importance, the obligation of the citizen to take part in the election and to support fit candidates is correspondingly grave. In order to excuse himself from fulfilling this duty, he needs a grave reason. A slight cause will relieve him from the obligation of voting only when he is morally certain that his vote would not affect the immediate result.

Like the public official, the private citizen is obliged to refrain from preferring the interests of individuals to the good of the public. Even well-meaning citizens often forget or ignore this principle; for example, by giving their political support to a friend or to a member of their own race or religious denomination, regardless of his lack of political equipment or devotion to the commonweal. Too often the honest citizen compromises with his conscience on the ground that the opposing candidate is "just as bad." In most cases, the person who votes for an unworthy candidate with this excuse on his lips does not take the trouble to ascertain whether it is a correct description of the facts.

Another unjustifiable practice prevalent among well-meaning citizens is that of ignoring principles and policies in their exercise of the electoral franchise. "Vote for a good man, regardless of party," is a vitally defective rule. It disregards the distinction between legislative offices and those which are merely adminis-

trative. If one is voting for a candidate for such positions as those of city treasurer or county auditor, or secretary of state, one need not think of any other qualities than honesty, intellectual capacity and technical equipment. Here, the rule of voting for a good man is roughly applicable. When, however, the office to be filled is that of governor of a state, President of the United States, member of a state legislature or of Congress, one must look for additional qualifications. The honest and efficient candidate may have some very undesirable and harmful notions concerning political and industrial policies. In all sincerity he may favor national imperialism or undue aggrandizement of one social class, or oppression of another social class. Obviously, the citizen does not promote the common good adequately when he votes for this sort of "good man." Indeed he may do more harm by giving his political support to such a candidate than if he voted for one whose moral or intellectual equipment was deficient, but who would support legislative policies which were just.

The statement is not infrequently made that the good man in other relations of life always makes the best kind of citizen. This is only a half truth. Fidelity to one's duties in the family, as a neighbor and in industrial relations, does indeed contribute much to the common welfare, but it does not necessarily provide one with the knowledge required by the functions and duties of citizenship. Practice of the domestic and social virtues does not of itself equip the citizen with that specific knowledge which he needs as a voter, nor with an adequate civic consciousness. Political relations are

a distinct field of human conduct, and the duties which arise out of them are distinct from the duties of any other department of life. To know them, therefore, requires specific attention and specific effort. A good father is not necessarily a good citizen, any more than he is a good employer or a good neighbor. A similar statement is true of the good man in every human relation outside of politics. Among the good men who are conspicuously bad citizens are those who fail to realize the extent to which good government depends upon the electors, those who lazily assume that politics is necessarily corrupt, and those who think that their full duty is done when they vote for an honest man without any reference to technical equipment or the character of his political principles and policies. In a word, the good man is not a good citizen unless he possesses the specific knowledge required for good citizenship.

This chapter may be properly concluded by a passage from the *Pastoral Letter* of the Hierarchy of the United States, issued in 1920:

> In its primary meaning, politics has for its aim the administration of government in accordance with the express will of the people and for their best interests. This can be accomplished by the adoption of right principles, the choice of worthy candidates for office, the direction of partisan effort toward the nation's true welfare and the purity of elections; but not by dishonesty. The idea that politics is exempt from the requirements of morality, is both false and pernicious; it is practically equivalent to the notion that in government

there is neither right nor wrong, and that the will of the people is simply an instrument to be used for private advantage. The expression or application of such views accounts for the tendency, on the part of many of our citizens, to hold aloof from politics. But their abstention will not effect the needed reform, nor will it arouse from their apathy the still larger number who are so intent upon their own pursuits that they have no inclination for political duties. Each citizen should devote a reasonable amount of time and energy to the maintenance of right government by the exercise of his political rights and privileges. He should understand the issues that are brought before the people and co-operate with his fellow-citizens in securing, by all legitimate means, the wisest possible solution.

CHAPTER VI

PATRIOTISM AND NATIONALISM

PATRIOTISM means love of country. Despite its general acceptance and its simple appearance, this definition is far from being clear or satisfactory. The word "country" is notoriously indefinite, while the "love" which is understood in connection with patriotism is equally indefinite. One of the best analyses of patriotism is that made by Dr. G. E. Partridge, and published in his work, *The Psychology of Nations.* As he views it, patriotism is a complex feeling based upon five fairly distinct factors.

The first of these is loyalty to country as a place; as home; as the land of one's forefathers; as the seat of family traditions and relations. This is the patriotism sung by the poet. It arouses sentiments at once filial and paternal. Perhaps it is most strikingly illustrated in the attachment which a foreign-born American feels to the country of his origin, as distinguished from the less emotional loyalty which he yields to the country of his adoption. The second factor is devotion to the ideas and ideals, the customs, morality and culture of a national group. Usually these goods are cherished as superior, and occasionally they are held suitable for more or less forcible imposition upon inferior groups. Witness, the extreme claims of *Deutsche Kultur,* and

the extremist plans for "Americanizing" the strangers within our own gates. The third factor in patriotism is loyalty of the individual to the social group. In its most primitive form it is clan or tribe loyalty; in our time it frequently becomes loyalty to one's social or economic class. When war impends or is waging, this social loyalty quickly embraces the nation, and punishes severely all members of the group who are indifferent or hostile to national safety. The fourth factor is devotion to a leader, or government, or state. The leader easily becomes the embodiment of the group spirit and the national spirit. When he founds a dynasty his authority and prestige gradually becomes merged in loyalty to the State. The fifth factor is the idea of country as a personage, particularly as a historical personage. Through a process of imaginative abstraction, the various national components, such as population groups, natural features, industrial conditions, political and social institutions, are stripped away or ignored. Only the essence or spirit remains. The country becomes a person, and a highly idealized person. An extreme example occurs in the declaration of a French writer that his countrymen were fighting, not for liberty or for civilization, but for France, "that most saintly, animated and tragic of figures." Personification is undoubtedly the most vital and most powerful factor in patriotism. It makes the strongest appeal to the imagination and the emotions, and inspires the noblest deeds of self-sacrifice. Loyalty to country as a person frequently assumes the character of religious devotion.

While every one of these five loyalties is reasonable

within certain limits, they are all susceptible of exaggeration and perversion. Devotion to country as a place has kept men in their native land when they would better have emigrated, and it has caused emigrants to remain attached to the land of their birth at the expense of the land of their adoption. Loyalty to national culture has impelled men to ignore or underestimate foreign culture. Loyalty to the social group frequently leads men to despise other social or national groups. Loyalty to leaders and to the state has often been responsible for the destruction of liberty. Loyalty to country as a person has caused men to forget that the state is made up of human beings.

The exaggeration of patriotic sentiment is not a new thing in the world. In all ages and in every country men have magnified patriotism at the expense of other duties. They have used it as a pretext for violating the rights of their fellow countrymen and for practicing aggression upon foreign peoples. Within the last century, however, this exaggeration has taken a form which, in some respects, was unknown in previous centuries. It is generally called nationalism. In his Encyclical on *The Peace of Christ,* Pope Pius XI refers to it thus:

> Patriotism—the stimulus of so many virtues and so many noble acts of heroism when kept within the bounds of the law of Christ—becomes merely an occasion and an added incentive to grave injustice when true love of country is debased to the condition of an extreme nationalism, when we forget that all men are our brothers and we members of the same great human family, that other nations

> have an equal right with us, both to life and to prosperity, that it is never lawful, nor even wise, to dissociate morality from the affairs of practical life, that in the last analysis it is "justice which exalteth a nation, but sin maketh nations miserable."

In the words of Louis LeFur, "the conflict of nationalism and internationalism constitutes the gravest problem of international law, affecting its very existence." Father Cathrein defines nationalism as "an inordinate love of country." It receives more specific and detailed characterization at the hands of Carlton J. H. Hayes: "A condition of mind in which loyalty to the ideal or to the fact of one's national state is superior to all other loyalties and of which pride in one's nationality and belief in its intrinsic excellence and in its 'mission' are integral parts."[1] In another passage, Dr. Hayes says that the distinguishing note of nationalism is "a proud and boastful habit of mind about one's own nation, accompanied by a supercilious or haughty attitude toward other nations; it admits that individual citizens of one's country may do wrong, but it insists that one's own nationality or national state is always right." [2]

So alarming does this phenomenon appear to many students of international affairs that more than one Catholic authority in Europe has referred to it as "the great heresy of our times," "the next heresy to be condemned," or in some variation of these phrases. Within a century, says a noted French author, Francis Delaisi,

[1] *Essays on Nationalism*, p. 60.
[2] *Op. cit.*, p. 275.

"nationalism has become a kind of universal religion of humanity." Some three or four years ago, Maurice Vaussard published a volume of more than four hundred pages entitled, *Enquête sur Le Nationalisme.* It is composed entirely of essays on this subject by noted professors, editors and priests, representing most of the countries of Europe, with one contribution from the United States. While these productions exhibit a great variety of opinion in details, they are substantially agreed in holding nationalism to be a widespread phenomenon and one that is full of danger to the peace of the world. In some European countries it identifies itself with Catholicism, and its most ardent advocates would fuse the combination into a national religion to take the place of the Universal Church.

Indeed, nationalism has itself assumed in the minds and affections of innumerable devotees most of the essential attributes of religion. Being incurably religious, man must have something to worship. Men who have lost definite belief in a personal God easily turn to the most important object in life, the national state. To it they give about the same kind of loyalty that in other ages they would have given to the Supreme Being. Nationalism arouses in them all the deep and compelling emotions that exist potentially in a religious system. Its most destructive features as a religion are thus described by Professor Hayes in the work already cited:

> Nationalism as a religion represents a reaction against historic Christianity, against the universal mission of Christ; it re-enshrines the earlier tribal mission of a chosen people. The ancient reflective

> Roman imagined that one chosen people—the Hebrew nation—was one too many for general comfort and safety; the thoughtful modern Christian may be pardoned for being a bit pessimistic about a world devoid of a Roman Empire and replete with dozens upon dozens of chosen peoples. Nationalism as a religion inculcates neither charity nor justice; it is proud, not humble; and it signally fails to universalize human aims. It repudiates the revolutionary message of St. Paul and proclaims anew the primitive doctrine that there shall be Jew and Greek, only that now there shall be Jew and Greek more quintessentially than ever. Nationalism's kingdom is frankly of this world, and its attainment involves tribal selfishness and vainglory, a particularly ignorant and tyrannical intolerance,—and war.[8]

The excesses of nationalism may be summarized as internal and external. Under its internal or domestic aspect it exaggerates the obedience and loyalty due the state, to the detriment of other obediences and other loyalties. It assumes in effect that the state can do no wrong, and that no individual, nor any social group or social institution has any rights which the state is bound to respect when they come into conflict with any object which the state sees fit to pursue.

Of course this is sheer immorality. The state is a group of human beings organized for the common good. Since men have no more right to do wrong in their cor-

[8] *Ibid.*, pp. 124, 125.

porate form than as individuals, they cannot obtain immunity for wrongdoing by invoking the name of the state. No society is exempt from the moral law. Since the state exists for the welfare of its members, it can have no possible justification for ignoring the rights of any of them, either as individuals or as groups. The state is not an end in itself.

The temper and attitude of nationalism under its external aspect is well illustrated by the familiar saying attributed to Commodore Stephen Decatur: "My country, in her intercourse with foreign nations may she be always right; but, right or wrong, my country." Despite its patent immorality, this statement has for years been carried at the head of the editorial page of a great metropolitan newspaper in the United States. Of course its author meant it to refer particularly to the exigencies of war. If the theory were restricted to war conditions, it need not arouse great alarm, for the overwhelming majority of men have always acted in those conditions precisely as they would have acted had they accepted the theory. The peculiar malice of nationalism is that it applies this malignant principle in peace as well as in war. It holds that one's own state is justified in using any means, not only in defense of its genuine rights, but for the extension of its power, or wealth, or glory, or aggrandizement. The immorality of such a doctrine does not require formal exposition or characterization.

During the thousand years which separate Luther and Machiavelli from Pope Gregory the

Great and which we designate, for lack of a better term, the middle ages, there were few signs of nationalism anywhere in Europe. The Europeans during this long period had many loyalties—to Catholic Church, to bishop or abbot, to parish priest, to lay lord, to tribal chieftain, to duke or count or baron, to guild of merchants or of craftsmen, to manor or town, to realism or nominalism, to St. Francis or St. Dominic, to pope or emperor, to Christendom in arms against Islam. Nationalities persisted throughout the period and undoubtedly there was acutely nascent consciousness of national differences towards the close of the middle ages, the result of the crusades, of the rise of vernacular literatures, and of the ambitious efforts of monarchs in western Europe, but if there was an object of popular loyalty superior to all others, it was not the nation but Christendom. If a man whose native tongue was French encountered a fellow Christian whose native tongue was English, both men were fully aware of a difference, but they were quite as aware of a similarity; and it should be remembered that Joan of Arc, who is now hailed as a saint of French nationalism, appeared on battlefields of the Hundred Years' War, not in response to the appeals of a nationalist press or the pressure of a patriotic draft-board and not in conformity with the example of national heroes as set forth in hundred per cent. French textbooks of history, but simply and solely in answer to "voices" which she heard from saints of God.[6]

[6] Hayes, *op. cit.*, p. 28.

Inasmuch as the Catholic Church is not identified with any nation but is truly international, it would seem reasonable to expect that her members should have a sane international viewpoint. They might be expected not merely to avoid and abhor the "heresy of nationalism" but to profess only a sane and moderate form of patriotism. This expectation has not been realized anywhere. In Great Britain and in the United States, to mention only two nations, Catholics have professed an exaggerated patriotism from fear of being counted unpatriotic by their fellow countrymen. Among Catholics as well as among non-Catholics, patriotism has been too generally associated with war and urged without sufficient discrimination. Too frequently the words of the Roman poet were quoted with unqualified approval, "*dulce et decorum est pro patria mori.*" There was not sufficient attention given to the fact that it is not "sweet and becoming to die for one's country" when one's country is engaged in a war of aggression. It is not a becoming thing nor a righteous thing to kill somebody else for one's country in that kind of war. Too frequently, likewise, Christian teachers have advocated and glorified a jingoistic nationalism which is quite un-Catholic, and which arose from exactly the same source as the doctrine of unlimited individualism. The combination of too little explicit and detailed teaching of international charity and too much teaching of narrow patriotism has left the Catholic masses unfortified against the pernicious and un-Christian political doctrines which beset them on every side. "They drink in the false doctrines of the Jingo press; they are misled by the fallacy of abstraction into conceiving vast

nations as single entities; they do not realize that to hate or malign a whole people is just as sinful as to hate or malign an individual; their patriotism has lost sight of the necessary limits imposed by their Christianity." [5]

Since the members of all races, nations and states are equal in the sight of God, they are all bound to one another by duties of natural charity. Since they have all been redeemed by the blood of Christ and called to become adopted sons of God, international charity has been raised to the dignity of a supernatural bond and virtue. It is diametrically opposed to any conception of patriotism which exhibits toward foreign nations an attitude of hatred, contempt, nationalistic superiority or habitual distrust. One of the gravest and most urgent duties of the citizen is to realize and apply this principle of international charity to the peoples of every country, not only in his private but in his political actions.

His religious teachers are under obligation to declare, expound, interpret, illustrate and make concrete Christ's commandment of love and the divine precept of justice. This teaching must be imparted to all groups and classes; in theological seminaries, in colleges and schools; in the pulpit and in catechetical instructions; in religious books and periodicals. The individual must be taught a right attitude of mind toward all foreigners. It is not enough to declare that "every human being is my neighbor." The obligations which are implicit in this phrase must be made explicit. They must be set forth in detail with regard to foreign races and

[5] Rev. Joseph Keating, S.J., in *The Month*, November, 1923.

nations. Men must be reminded that "every human being" includes Frenchmen, Germans, Italians, Englishmen, Japanese, Chinese and all other divisions of the human family. And this doctrine should be repeated and reiterated. Effective teaching and adequate assimilation depend largely upon the simple process of repetition.

The obligation of avoiding and detesting excessive patriotism has manifold application to international intercourse. The Catholic citizen who takes the obligation seriously will find numerous occasions and opportunities for putting it into practice. To-day, it is particularly urgent in relation to the problems of international peace. If the world is to be kept out of a war which will not improbably mean the destruction of civilization, public officials and private citizens must quickly unlearn certain fallacies which have in every country formed an important element of misguided and exaggerated patriotism. They should strive to rid their minds of the superstition that war is necessary and inevitable. They should reflect that never yet in modern times has any considerable number of states made an honest and sustained effort to provide institutions for the prevention of war and the preservation of peace. They should realize that the various conditions which justify any nation in declaring war have only very rarely been present at the beginning of any of the great conflicts of modern times. They should honestly cultivate the will to peace and strive to make an act of faith in the possibility of peace. As Pope Pius XI said not long ago, "In order to reach a just and lasting peace it is necessary that the love of peace be deep-rooted in the

hearts of men." When public officials and private citizens have acquired this will and this faith, they will have advanced more than halfway toward the cherished goal.

The next steps are to oppose all national policies which tend to provoke war and promote all measures which tend to secure peace. There should be no increases in national armament which are based upon the fallacious but insidious theory of indefinite preparedness. This is particularly pertinent to the people of the United States. Our country is in no danger of attack by any other nation, or any combination of foreign nations, in the near future. Increasing our armaments will provoke other states to similar disastrous activity. If we refrain from this unnecessary "preparedness," we shall reassure the foreign peoples and cause them to consider more seriously the problem of universal disarmament.

Finally, public officials and private citizens are morally bound to consider sympathetically and to support one or more of the leading methods and instruments that are to-day widely advocated for insuring peace. These are: Outlawing of war, general disarmament, compulsory international arbitration, the League of Nations and the World Court. All these were advocated, either specifically or in principle, by Pope Benedict XV in his address to the Belligerents, August 1, 1917, and in his letter to the American people, December 31, 1918. The Catholic citizen who supports these measures and institutions can justly claim that his action is in accord with the highest authority

of his Church. The Catholic citizen who is indifferent to the efforts and proposals which are put forth in the interest of world peace is disloyal not only to the declarations of Pope Benedict XV but to those of the present Holy Father, Pius XI, and, indeed, to the traditional and unvarying teaching of the Church.

Much has been said in this paper about the excesses of patriotism and the duty of avoiding them. Little has been said about the value or the obligations of patriotism. This method of treatment has been dictated by the necessity of emphasizing those features of the situation which are most urgent in our time. The great danger to-day is that the citizens will exaggerate love of country, not that they will become futile internationalists. Of course, patriotism is one of the primary duties of the citizen; of course, the citizen is bound to love his own country more than he loves other countries, just as he is obliged to love his family more than his neighbor's. This is Christianity and reason and common sense.

If space were available for a formal and detailed presentation of the positive duties of patriotism, my first concern would be the great truth that patriotism is not merely a war-time virtue and that it has wider applications than mere loyalty to the government as against sedition or foreign interests. Adequate patriotism includes a continuous effort to promote the common good and to bring about more and more justice, charity, tolerance, virtue and happiness in and among all the classes of the commonwealth. Appealing to the "patriotic spirit" of the Catholic people and of all

other citizens, the Bishops of the United States, in their Pastoral Letter, January, 1920, did not hesitate to say: "The tasks of peace, though less spectacular in their accomplishment than those of war, are not less important and surely not less difficult."

CHAPTER VII

THE RIGHTS OF THE CITIZEN

ACCORDING to the majority of non-Catholic writers on political science, economics and sociology, there is no such thing as natural rights. All the rights that the citizen possesses are derived from the state. Against it he has no moral right; he has only such immunities and guarantees as are provided in the political constitution. Through proper constitutional changes, a state may deprive the citizen of all his rights, may arbitrarily take away his liberty and his property and even his life.

According to the Catholic doctrine, the individual is endowed with certain moral rights which arise out of his nature, because he is a person and therefore possesses intrinsic worth. These rights are necessary for the welfare of the human person. Both in time and in authority they are prior to the state. Since the state does not confer them, it cannot take them away.

Happily for the United States, the doctrine of natural rights has a definite place in American political principles. It is specifically and strikingly recognized in the Declaration of Independence. In the second paragraph of that document are found these words: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness." Life and liberty

include a very large part of the province of natural rights, while the pursuit of happiness implies the right to marry, to possess property and to enjoy some measure of economic opportunity. Liberty is a term of very wide comprehension comprising, in addition to freedom of movement and immunity from political oppression, freedom of education, religion, speech and writing. The right to life includes immunity from all forms of arbitrary physical assault.

According to the natural law, the citizen possesses all these rights as a human being, since they are all necessary for his existence, for the development of his personality and for the attainment of his ultimate end. They may not be rightfully ignored or attacked by any law or any government.

In the United States, these are not only natural rights but civil rights—that is, they belong to the individual as a member of the state. They are conferred by the state for the promotion of the common good and the welfare of the individual.

The civil rights of the American citizen are described in the Constitution of the United States and in the constitutions of the various commonwealths and are substantially the same in all these organic laws. The First Amendment to the Federal Constitution reads thus: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Although this language seems to guarantee unlim-

ited freedom of speech and of the press, it has never received that construction from either courts or lawmakers. It has been authoritatively interpreted as comprising that reasonable liberty of speech and writing which had prevailed for generations previously in the American colonies and for more generations in Great Britain. Hence, there is no occasion for surprise over the fact that during the Great War Congress and many of our state legislatures enacted laws which forbade men to speak or to write anything which tended to prevent the success of the American arms. Specific warrant for these statutes is found in Section 8 of Article I of the Federal Constitution. Since the War, more than twenty of our states have passed so-called "criminal syndicalism" laws which make it a felony to advocate the overthrow of government by violence. These, too, have been sustained by the Supreme Court, even though the acts which were prosecuted threatened no "clear and present danger" to our institutions.

Immunity from arbitrary invasion of the home is secured in the Fourth Amendment to the Constitution of the United States: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Hence, no private individual may enter a man's house without his permission, nor may an officer of the law do so unless he has obtained a formal warrant from the court. Mere suspicion or private information is not sufficient for

official search. Although there have been occasional violations of this guarantee by overzealous enforcement agents operating under the Volstead Act, they have been set aside and rebuked by the courts whenever they were questioned by the aggrieved householder.

Security against unjust or arbitrary prosecution by law officers is guaranteed in the Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

The principal effects of this right are protection for the citizen against prison sentence until he has had a fair trial; assurance of a prompt trial; the provision of witnesses on his behalf and the assistance of a lawyer; liberty on bail until the trial begins, unless the crime with which he is charged is very serious, and, in case of an unfavorable sentence, an appeal to a higher court. Occasionally, indeed, these guarantees are disregarded by civil officials, but these instances are not numerous, except in time of war or in the disturbed period immediately following.

Probably the most comprehensive of all the constitutional guarantees is found in the Fifth Amendment: "Nor shall any person . . . be deprived of life, liberty or property without due process of law; . . ." In the

course of time, "due process of law" has obtained two distinct meanings: First, a judicial hearing, a trial, a court proceeding; second, reasonable legislation as interpreted by the courts. The effect of this clause, therefore, is to protect the citizen against deprivation of life, liberty or property without a regular trial, or through the instrumentality of arbitrary laws. The clause immediately following the one quoted in the last paragraph declares: "Nor shall private property be taken for public use without just compensation." No matter how urgently the state may need or seem to need some of the goods of its citizens, it may not take such property without paying a fair price for it. While the government of the United States, like all other governments, is endowed with the right of eminent domain, it cannot exercise that right at the expense of the right of private ownership.

All the foregoing amendments and provisions apply only to Congress. They are all constitutional restraints upon the national legislature. With a single exception, they could all be disregarded by the several states. For example, any state legislature could pass a law forbidding Catholics to assemble publicly for religious worship or enact a statute denying trial by jury to any of its citizens without violating the Constitution of the United States. Nevertheless, practically all of the state constitutions contain similar guarantees of individual rights and similar prohibitions to their respective legislatures.

The exception referred to above is the life, liberty and property clause of the Fifth Amendment. This is repeated in the Fourteenth Amendment where it

takes the following form: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

It is under the Fourteenth Amendment, rather than under the Fifth, that has taken place the greater part of the development of the "due process" clause in the courts; for most of the actions involving liberty and property have been brought against state laws. Thus, the Oregon anti-parochial school law was declared unconstitutional by the United States Supreme Court because it violated this part of the Fourteenth Amendment. Through this decision it has become a matter of civil law that the liberty of a citizen includes the freedom to send his children to private schools, if he prefers them to public schools. On the other hand, the Supreme Court has in a few important cases construed the word "liberty" according to a theory of exaggerated individualism. It has identified that term with an excessive and extortionate freedom of contract; for example, when it pronounced unconstitutional the minimum wage law of the District of Columbia. In this case the Court found that a law requiring working women to be paid living wages was a violation of proper freedom of contract. Abstracting from this mistaken judicial interpretation of liberty, we find that the civil rights conferred upon and assured to the citizens by the organic laws of our country comprise all the liberty and opportunity that could reasonably be claimed from any state. Inasmuch as these guaran-

tees are matters of constitutional rather than statute law, they cannot be abolished through the temporary whims of the electors or of the national or state legislators. They can be repealed only through amendment of the Federal and State Constitutions. This process is always sufficiently slow to give time for the better judgment of men to reassert itself.

As distinguished from his civil rights, the citizen's political rights are intended for a public rather than a private purpose. They have to do mainly with voting and holding office. According to Section 3 of Article VI of the Federal Constitution, "No religious test shall ever be required as a qualification to any office or public trust in the United States." A similar prohibition now exists in almost, if not quite, all the state constitutions.

According to the Fifteenth Amendment, the right to vote "shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude." While this political right may be through various devices nullified by any state, such nullification does not amount to a violation of any natural right. The elective franchise is not among the natural rights of the individual. It is created by the state for a civil purpose which might conceivably be attained, and in several countries has been attained, without universal suffrage.

INDEX

Ryan, A.J. 59426
Catholic church and the citizen.

DATE LOANED	BORROWER'S NAME
1-6-67	J.J. Sauer
APR 3 '85	Ron Duty
JUL 10 '85	Renew
SEP 3 '85	mail - [illegible] 930 [illegible]